



Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851



SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 581

IN THE MATTER OF C. SAMUEL SUTTER

DISPOSITION AGREEMENT

This Disposition Agreement ("Agreement") is entered into between the State Ethics Commission ("Commission") and C. Samuel Sutter ("Sutter") pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On February 10, 1998, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Sutter. The Commission has concluded its inquiry and, on July 22, 1998, found reasonable cause to believe that Sutter violated G.L. c. 268A.

The Commission and Sutter now agree to the following findings of fact and conclusions of law:

1. Sutter was, during the time relevant, a Bristol County assistant district attorney ("ADA").^{1/} As such, Sutter was a state employee as that term is defined in G.L. c. 268A, §1.
2. Casey & Thompson P.C. is a law firm practicing in Bristol County. John Casey ("Casey") and Bruce Thompson ("Thompson") are shareholders in the firm.^{2/}
3. In December 1994, Sutter solicited legal advice from Casey concerning his recent separation from his wife.^{3/} Between December 1994 and March 14, 1995, Sutter and Casey consulted on several occasions regarding this matter.
4. On March 14, 1995, Sutter as an ADA represented the Commonwealth regarding a motion to dismiss in the district court as to which Thompson represented the defendant.^{4/}
5. As of March 14, 1995, Sutter was still consulting with Casey regarding the above-described personal matter, and he expected that the law firm of Casey & Thompson would represent him on that matter if it continued.^{5/}
6. Sutter did not disclose to his appointing authority, the District Attorney ("the DA"), his private relationship with the law firm of Casey & Thompson.
7. General laws chapter 268A, §23(b)(3) prohibits a state employee from acting in a manner which would cause a reasonable person, having knowledge of the relevant

circumstances, to conclude that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person.

8. By participating as an ADA in a matter in which the law firm of Casey & Thompson had an interest at a time when he had through his dealings with Casey a private relationship with Casey & Thompson in a personal matter, Sutter acted in a manner which would cause a reasonable person with knowledge of all the relevant circumstances to conclude that the attorneys at Casey & Thompson could improperly influence Sutter or unduly enjoy his favor in the performance of Sutter's official duties, thereby violating G.L. c. 268A, §23(b)(3).^{6/ 7/}

9. By way of mitigation, Sutter notes that on March 14, 1995, he was filling in the district court, received several files scheduled for hearing or trial for that day for the first time on that morning, and had no prior knowledge that Thompson would be representing the defendant until shortly before the hearing began. According to Sutter, due to the time pressures of handling several cases that day on short notice and because he had been dealing only with Casey about his personal matter, it did not occur to him that his litigating a matter with Thompson would create an appearance problem.

The Commission is not unmindful of the difficulties faced by an ADA in district court session and does find these circumstances to be somewhat mitigating. Nevertheless, it concludes that he had the opportunity and obligation to inform the judge that he had a conflict, obtain a continuance for the purpose of disclosing the conflict to the District Attorney, and have the District Attorney decide who should handle the matter.^{8/}

10. Sutter cooperated with the Commission's investigation.

In view of the foregoing violation of G.L. c. 268A by Sutter, the Commission has determined that the public interest would be served by the disposition of this matter without further civil penalty. In disposing of this matter by this disposition agreement, Sutter waives all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: January 20, 1999

^{1/}From January 1994, to February 6, 1995, Sutter was the Supervisory ADA at the Attleboro District Court. On February 6, 1995, Sutter was transferred to Superior Court. He continued to appear in the Attleboro District Court to fill in for ADAs who were ill or on vacation, but a new Supervisory ADA was appointed for the Attleboro District Court.

^{2/}The other major shareholder of the firm is not relevant to these proceedings.

^{3/}They had no prior attorney-client relationship.

^{4/}The defendant was being prosecuted for operating under the influence of alcohol. On February 28, 1995, Thompson filed a motion to dismiss the case on various grounds. On March 14, 1995, Sutter and Thompson engaged in an evidentiary hearing which involved presenting

witnesses and making oral arguments regarding the motion. After the hearing, the judge took the matter under advisement. While the matter was under advisement, Sutter took steps so that the matter would be appealed in the event that the judge allowed the motion. The judge did allow the motion to dismiss, the Commonwealth did appeal, and the judge's decision was eventually reversed by the Appeals Court and the case was remanded back to the district court.

5/The law firm of Casey & Thompson did continue to represent Sutter. Sutter has paid for a substantial portion of these services and intends to pay the outstanding balance.

6/Section 23(b)(3) provides in relevant part: "It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion."

7/There is no evidence to indicate that Sutter provided Casey & Thompson with any preferential treatment or that he conducted himself other than in a professional manner regarding the above described evidentiary hearing.

8/As a matter of public policy it is important that public officials not engage in activity which creates the appearance that their integrity has been undermined. In a recent decision and order, *In re Scaccia*, 1996 SEC 838, the Commission stated its position:

"Section 23(b)(3) is concerned with the appearance of a conflict of interest as viewed by the reasonable person, not whether the [public employee or official] actually gave preferential treatment. The Legislature, in passing this standard of conduct, focused on the perceptions of the citizens of the community, not the perceptions of the players in the situation." *In re Hebert*, 1996 SEC 800. [I]n applying §23(b)(3) to a public employee, [the Commission] will evaluate whether, 'due to his private relationship or interest, an appearance arises that the integrity of the public official's action might be undermined by the relationship or interest.' *In re Flanagan*, 1996 SEC 757. See also *In re Antonelli*, 1982 SEC 101, 110 (evaluating precursor of §23(b)(3), Commission indicated major purpose of section to prohibit public employee from engaging in conduct which will raise questions over impartiality or credibility of his work). *Id.* at 848.

This policy concern is especially applicable to our criminal justice system where appearances of conflict of interest must be avoided if our citizens' confidence in the integrity of the system is to be maintained.